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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/578,498	06/20/2007	Jean-Marc Pardonge	Q94645	1725
23373 7590 08/14/2009 SUGHRUE MION, PLLC 2100 PENNSYLVANIA AVENUE, N.W. SUITE 800 WASHINGTON, DC 20037				
EXAMINER				
WOOD, JONATHAN K				
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Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Office Action Summary

Application No.

10/578,498

Applicant(s)

PARDONGE ET AL.

Examiner

JONATHAN WOOD

Art Unit

3754

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --
Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 12 December 2007.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 1-17 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 1-17 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☒ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 20 June 2007 is/are: a) ☐ accepted or b) ☒ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☒ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☒ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☒ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftperson's Patent Drawing Review (PTO-948)
- 3) ☒ Information Disclosure Statement(s) (PTO-8508)
- Paper No(s)/Mail Date 5/5/2008
- 4) ☐ Interview Summary (PTO-413)
- Paper No(s)/Mail Date _____
- 5) ☐ Notice of Inventor's Patent Application
- 6) ☐ Other: _____

DETAILED ACTION

Drawings

1. The drawings are objected to as failing to comply with 37 CFR 1.84(p)(5) because they do not include the following reference sign(s) mentioned in the description: 72. Corrected drawing sheets in compliance with 37 CFR 1.121(d) are required in reply to the Office action to avoid abandonment of the application. Any amended replacement drawing sheet should include all of the figures appearing on the immediate prior version of the sheet, even if only one figure is being amended. Each drawing sheet submitted after the filing date of an application must be labeled in the top margin as either "Replacement Sheet" or "New Sheet" pursuant to 37 CFR 1.121(d). If the changes are not accepted by the examiner, the applicant will be notified and informed of any required corrective action in the next Office action. The objection to the drawings will not be held in abeyance.

Specification

2. The abstract of the disclosure is objected to because it includes legal phraseology such as 'said'. Correction is required. See MPEP § 608.01(b).

The following guidelines illustrate the preferred layout for the specification of a utility application. These guidelines are suggested for the applicant's use.

Arrangement of the Specification

As provided in 37 CFR 1.77(b), the specification of a utility application should include the following sections in order. Each of the lettered items should appear in upper case, without underlining or bold type, as a section heading. If no text follows the section heading, the phrase "Not Applicable" should follow the section heading:

- (a) TITLE OF THE INVENTION.
- (b) CROSS-REFERENCE TO RELATED APPLICATIONS.

- (c) STATEMENT REGARDING FEDERALLY SPONSORED RESEARCH OR DEVELOPMENT.
 - (d) THE NAMES OF THE PARTIES TO A JOINT RESEARCH AGREEMENT.
 - (e) INCORPORATION-BY-REFERENCE OF MATERIAL SUBMITTED ON A COMPACT DISC.
 - (f) BACKGROUND OF THE INVENTION.
 - (1) Field of the Invention.
 - (2) Description of Related Art including information disclosed under 37 CFR 1.97 and 1.98.
 - (g) BRIEF SUMMARY OF THE INVENTION.
 - (h) BRIEF DESCRIPTION OF THE SEVERAL VIEWS OF THE DRAWING(S).
 - (i) DETAILED DESCRIPTION OF THE INVENTION.
 - (j) CLAIM OR CLAIMS (commencing on a separate sheet).
 - (k) ABSTRACT OF THE DISCLOSURE (commencing on a separate sheet).
 - (l) SEQUENCE LISTING (See MPEP § 2424 and 37 CFR 1.821-1.825. A "Sequence Listing" is required on paper if the application discloses a nucleotide or amino acid sequence as defined in 37 CFR 1.821(a) and if the required "Sequence Listing" is not submitted as an electronic document on compact disc).
3. The disclosure is objected to because of the following informalities: no section headings are present. Further, Page 9, line 25 recites 'takes' which appears to be a typographical error for the term 'makes'. Appropriate correction is required.

Claim Objections

4. Claim 13 is objected to because of the following informalities: Line 2 recites 'form' and should recite 'forms'. Appropriate correction is required.

Claim Rejections - 35 USC § 112

5. Claims 1-17 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Regarding claim 1, the phrase "such as" renders the claim indefinite because it is unclear whether the limitations following the phrase are part of the claimed invention. See MPEP § 2173.05(d).

Regarding claim 5, line 2 recites "a tank" when a tank has previously been defined in claim 3. It is unclear if applicant is referring to a new tank or the previously defined tank.

Claim 9 recites the limitation "said dispensing head" in lines 2 and 3. There is insufficient antecedent basis for this limitation in the claim. It is recommended to amend to "a dispensing head" or define a dispensing head earlier in the claim.

Claim 12 recites the limitations "the dispensing head", "the retaining ring", and "the plunger tube" in lines 3-5. There is insufficient antecedent basis for these limitations in the claim. It is recommended to amend to "a dispensing head", "a retaining ring", and "a plunger tube" or define these elements earlier in the claim.

Claim 13 recites the limitation "the seat" in line 2. There is insufficient antecedent basis for this limitation in the claim. It is recommended to amend to "a seat" or define a seat earlier in the claim.

Claim Rejections - 35 USC § 102

6. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application

by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

7. Claims 1-5, 7-12, and 15-16 are rejected under 35 U.S.C. 102(e) as being anticipated by US Patent No. 7,014,069 B2 to *Crosnier et al.* (*Crosnier*).

Crosnier shows a pump comprising a pump body (1), a pump chamber (17), a piston (8) sliding in the pump chamber, a dispensing orifice (4), and a shutter (portion of 9 adjacent 4) forming an outlet valve with the dispensing orifice and embodied in one piece with the piston (Figure 1), the shutter being movable between a closed position of the dispensing orifice and an open position of the dispensing orifice (col. 5, ll. 39-46), wherein the pump only has one elastic element (5) to bring the piston to its rest position after actuation as well as drive the shutter to a closed position (col. 6, ll. 39-42 & 63-65).

Regarding claim 2, *Crosnier* shows the spring being away from all contact with the fluid product (col. 5, ll. 15-17).

Regarding claims 3-5, *Crosnier* shows the pump body embodied with a retaining ring (top portion of 1) and a plunger tube (3).

Regarding claims 7-8, *Crosnier* shows the pump comprising a dispensing head (2) including the dispensing orifice placed around the pump body (Figure 1).

Regarding claim 9, *Crosnier* shows the dispensing head being connected onto the retaining ring (Figure 1) and stops (32 and 33) defining the rest position of the pump.

Regarding claims 10-11, *Crosnier* shows an insert (10) embodied with the shutter and placed in the pump chamber upstream of the dispensing orifice (Figure 1).

Regarding claim 12, *Crosnier* shows the pump constituted by only 4 parts including the part forming the dispensing head (4), the part forming the piston and shutter (8/9), the part forming the spring (5), and the part forming the pump body, retaining ring, and plunger tube (1).

Regarding claim 16, *Crosnier* shows the pump of claim 1 attached to a tank (receptacle, col. 4, line 23).

8. Claims 1, 2, 7, 8, 10-11 and 15 are rejected under 35 U.S.C. 102(b) as being anticipated by US Patent No. 5,207,659 to *Pennaneac'h et al.* (*Penn*).

Penn shows a pump comprising a pump body (1), a pump chamber (38), a piston (15) sliding in the pump chamber, a dispensing orifice (11), and a shutter (end of 17) forming an outlet valve with the dispensing orifice and embodied in one piece with the piston (col. 4, ll. 10-12), the shutter being movable between a closed position of the dispensing orifice and an open position of the dispensing orifice (col. 3, ll. 67-68), wherein the pump only has one elastic element (28) to bring the piston to its rest position after actuation as well as drive the shutter to a closed position (inherent for proper operation).

Regarding claim 2, *Penn* shows the spring being away from all contact with the fluid product (col. 4, ll. 66-68).

Regarding claims 7-8, *Crosnier* shows the pump comprising a dispensing head (39 with 8) including the dispensing orifice placed around the pump body (Figure 1).

Regarding claims 10-11, *Crosnier* shows an insert (17) embodied with the shutter and placed in the pump chamber upstream of the dispensing orifice (Figure 1).

Claim Rejections - 35 USC § 103

9. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

10. The factual inquiries set forth in *Graham v. John Deere Co.*, 383 U.S. 1, 148 USPQ 459 (1966), that are applied for establishing a background for determining obviousness under 35 U.S.C. 103(a) are summarized as follows:

1. Determining the scope and contents of the prior art.
2. Ascertaining the differences between the prior art and the claims at issue.
3. Resolving the level of ordinary skill in the pertinent art.
4. Considering objective evidence present in the application indicating obviousness or nonobviousness.

11. This application currently names joint inventors. In considering patentability of the claims under 35 U.S.C. 103(a), the examiner presumes that the subject matter of the various claims was commonly owned at the time any inventions covered therein were made absent any evidence to the contrary. Applicant is advised of the obligation under 37 CFR 1.56 to point out the inventor and invention dates of each claim that was

not commonly owned at the time a later invention was made in order for the examiner to consider the applicability of 35 U.S.C. 103(c) and potential 35 U.S.C. 102(e), (f) or (g) prior art under 35 U.S.C. 103(a).

12. Claims 3-6, 12-14, and 16 are rejected under 35 U.S.C. 103(a) as being unpatentable over *Penn* in view of US Patent No. 4,830,284 to *Maerte* (*Maerte*).

Penn shows all aspects of applicant's invention as set forth in claim 1, but does not disclose the pump comprising a retaining ring or plunger tube connected to the pump body. However, *Maerte* shows a pump having a pump body (12) to which a retaining ring (portion of 12 with threads 13) and plunger tube (16) are attached. It would have been obvious to one of ordinary skill in the art at the time of the invention, under the teachings of *Maerte*, to have embodied a retaining ring and plunger tube with the pump body of *Penn* in order to enable the pump to be attached to a container (retaining ring) and allow for the pump to expel all fluid in the container (plunger tube).

Regarding claim 6, *Penn* as modified by *Maerte* shows the retaining ring embodied in one piece with an inlet valve seat of the pump chamber (*Penn*, 6 with 6a).

Regarding claim 12, *Penn* as modified by *Maerte* shows the pump constituted by only four parts including the part forming the dispensing head (*Penn*, 39 with 8), the part forming the piston (*Penn*, 15 with 17), the part forming the spring (*Penn*, 40), and the part forming the pump body, retaining ring, and plunger tube (*Penn*, 1 with *Maerte*, 16 and bottom portion of 12).

Regarding claim 13, *Penn* as modified by *Maerte* shows the part forming the pump body, retaining ring, and plunger tube also forming a seat (*Penn*, 6) of an inlet valve (*Penn*, 6a) of the pump chamber interacting with a valve element (*Penn*, 16).

Regarding claim 14, *Penn* as modified by *Maerte* shows the valve element integral with the part forming the piston and shutter (*Penn*, Figure 1).

Regarding claim 16, *Penn* as modified by *Maerte* shows the pump of claim 1 connected to a tank (*Maerte*, 14).

13. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Crosnier* in view of US PG PUB No. 2003/0183655 A1 to *Padar* (*Padar*).

Crosnier shows all aspects of applicant's invention as set forth in claim 16, but does not disclose the pump snapped on to the tank with a gasket interposed between the two. However, *Padar* shows a pump attached to a tank (1), wherein the pump is snapped on (¶28, ll. 3-6) and a gasket (the reference line for 5b passes through it in Figure 1) interposed between the two. It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Padar*, to have snapped the pump of *Crosnier* onto the tank and interposed a gasket in between the two in order to effectively seal the pump onto the tank.

14. Claim 17 is rejected under 35 U.S.C. 103(a) as being unpatentable over *Penn* in view of *Maerte* as applied to claim 16 above, and further in view of *Padar*.

Penn as modified by *Maerte* shows all aspects of applicant's invention as set forth in claim 16, but does not disclose the pump snapped on to the tank with a gasket interposed between the two. However, *Padar* shows a pump attached to a tank (1),

wherein the pump is snapped on (¶28, ll. 3-6) and a gasket (the reference line for 5b passes through it in Figure 1) interposed between the two. It would have been obvious to one having ordinary skill in the art at the time of the invention, under the teachings of *Padar*, to have snapped the pump of *Penn* as modified by *Maerte* onto the tank and interposed a gasket in between the two in order to effectively seal the pump onto the tank.

Conclusion

15. The prior art made of record and not relied upon is considered pertinent to applicant's disclosure.

- US Patent No. 5,816,453 to *Spencer et al.* discloses applicant's invention of claim 1.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to JONATHAN WOOD whose telephone number is (571)270-7422. The examiner can normally be reached on Monday through Friday, 7:30 AM to 5 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Kevin Shaver can be reached on (571)272-4720. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

/JKW/
Examiner, Art Unit 3754

/Kevin P. Shaver/
Supervisory Patent Examiner, Art Unit 3754